IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8279 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NATIONAL HIGH SCHOOL - Petitioner(s)

Versus

ASSISTANT PROVINDENT FUND COMMISSIONER & 2 - Respondent(s)

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Appearance :

MR ANSHIN H DESAI for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1, 3,
MR MS RAO for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 20/12/2005

ORAL JUDGMENT

1. The petitioner herein has challenged the order dated 19th February 2004 passed by the respondent no.1 and also the demand notice issued by respondent no.3 dated 24/25th

June 2004.

2. The short facts of the case are that the respondent herein were directed to pay provident fund for the period commencing from August 1982 to February 1988 on the ground that the petitioner school is liable to pay the same as education institutions are covered by the judgement of the Supreme Court. The petitioner approached the respondent authorities contending that they are not liable to pay such amount and that the dispute was pending before the authorities till 1997 wherein the proceedings were of inquiry under section 7A of the Employees' Provident Fund & Misc. Provisions Act, 1952. In the said dispute an order has been passed stating that the petitioner was liable to make payments. Thereafter the petitioner was permitted to make the payment in 36 equal monthly installments to be paid before 14th day of every month.

3. On 5th February 2003 the petitioner received a communication from the respondent no.1 stating that the petitioner school is liable to make good the damages to the tune of Rs.95,119/-. Petitioner replied that they are not liable to make such payment. On 31st October 2003 a

notice came to be issued calling upon the petitioner to show cause as to why damages should not be imposed on the petitioner to which the petitioner submitted their reply on 12th January 2004. Ultimately the order dated 19th February 2004 came to be passed and thereafter the notice dated 24/25th June 2004 was issued directing the petitioner to make payment of Rs.95,119/- within a period of 15 days from the date of issue of the notice.

4. Mr. Desai for the petitioner has submitted that the impugned order has been passed without application of mind. He submitted that a detailed reply has been given by the petitioner on 12th January 2004 wherein it was clearly stated that due to the circumstances beyond their control the payment was late. He further submitted that the impugned order has not assigned any reasons and the recovery sought is prior to 1990.

5. As a result of hearing and perusal of the record it is clear that no reasons are assigned by the respondent authority in the impugned order. Admittedly the recovery which is sought is prior to the year 1990. The circular which has been relied upon by the authority gives only prospective effect. In the case of S.G. Textile Mills V.

R.P.F. Commissioner, reported in 33(2) GLR 1630 wherein it is held that while imposing damages for delayed payment of contribution, the authority must take note of several relevant circumstances and there should be a speaking order referring to these questions. In the case of Mansa Nagrik Bank Vs.R.P.F. Commissioner, reported in 46(2) GLR 1592 on similar facts it is held that the authority cannot recover any penalty.

6. It is also required to be noted that in the reply dated 12th January 2004. In para 3 it is stated as under:

> "3. The monthwise statement attached herewith is as per your 14-B notice. We had tendered the cheques in time to the respective banks but the bank had cleared late due to shortage of bank staff. In this regard so many complaints had been lodged through The Navanagar Chamber of Commerce and Industries, Jamangar. Your department inspector had also took up the matter. Some times, due to riots, earthquake, Bandh and bank strike the late payment took place. In the above circumstances and looking to our regularly timely payment you are requested to consider the cheque date as payment date as the bank had cleared the Cheques late on their part or due to unavoidable circumstances."

7. Mr. M.S. Rao, learned counsel for the respondent is not in a position to dispute the above fact. Therefore, I am of the view that the impugned order and notice are

required to be quashed.

8. In the premises aforesaid, the impugned order dated 19.2.2004 and the impugned notice dated 24/25-6-2004 are quashed and set aside. Rule is made absolute accordingly with no order as to costs.

[K.S. JHAVERI, J.]

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